

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

CLARK ALIX FORTUNAT,
Debtor.

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tmd3574/vb
April 23, 2007
9:00a.m.

Chapter 13
Case No: 107-40684-ESS

NOTICE OF MOTION

PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Elizabeth S. Stong, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3585 on April 23, 2007, at 9:00a.m., or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than five (5) days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
April 5, 2007

/s/ Marianne DeRosa
MARIANNE DeROSA, TRUSTEE
100 JERICHO QUADRANGLE, SUITE 208
JERICHO, NY 11753
(516) 622-1340

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tmd3574/vb
April 23, 2007
9:00 AM

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IN RE:

Chapter 13: 107-40684-ESS

CLARK ALIX FORTUNAT,
Debtor.

APPLICATION

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TO THE HONORABLE ELIZABETH S. STONG, U.S. BANKRUPTCY JUDGE:

MARIANNE DEROSA, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtor filed a petition under the provisions of 11 U.S.C. Chapter 13 on February 12, 2007, and, thereafter, MARIANNE DEROSA was duly appointed and qualified as Trustee.
2. The Chapter 13 Trustee objects to the confirmation of the Debtor's Chapter 13 Plan, dated February 9, 2007, and filed with the Court on February 12, 2007, and reflected in the Court's docket as number 4.
3. The Debtor's budget filed with the petition for relief under Chapter 13 indicates that the Debtor's disposable income after payment of all monthly expenses evidenced in Schedule J is \$631.07. The Chapter 13 Plan requires a monthly payment of \$764.00 each month. The Debtors will not be able to make all payments under the plan as required by 11 U.S.C. Section 1325 (a)(6). Therefore, the plan cannot be confirmed.
4. In addition, the Debtor's failed to provide the Trustee with proof post-petition mortgage payments as required by E.D.N.Y. LBR 2003-1(a)(vii).
5. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. Section 1307 (c)(1) and (c)(5).
6. During the pendency of this bankruptcy estate, the Trustee has incurred costs and expenses in the ordinary course of administering this case and seeks reimbursement of \$150.00 to cover these expenses.

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order denying confirmation and dismissing this Chapter 13 case, and granting the Chapter 13 Trustee the sum of \$150.00 to be deducted from the Debtor's net receipts, if any, for administrative costs and expenses incurred during the pendency of this case, and for such other and further relief as may seem just and proper.

Dated: Jericho, New York
April 5, 2007

/s/ Marianne DeRosa
Marianne DeRosa, Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13 Case No: 107-40684-ESS

CLARK ALIX FORTUNAT,

CERTIFICATE OF SERVICE
BY MAIL

Debtor.

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This is to certify that I, Viola Basenese, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

CLARK ALIX FORTUNAT
900 E 56th Street
Brooklyn, NY 11234

RONALD D. WEISS
734 Walt Whitman Road; Suite 203
Melville, NY 11747

COUNTRYWIDE HOME LOANS
C/O FEIN, SUCH & CRANE, LLP
28 East Main Street; Suite 1800
Rochester, NY 14614

This April 5, 2007

/s/ Viola Basenese
Viola Basenese, Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
100 Jericho Quadrangle, Suite 208
Jericho, New York 11753
(516) 622-1340